IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

O.J.APPEAL No 19 of 2000

in

COMPANY PETITIONNo 147 of 2000

For Approval and Signature:

Hon'ble MR.JUSTICE R.K.ABICHANDANI
and
Hon'ble MR.JUSTICE A.R.DAVE

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1. Whether Reporters of Local Papers may be allowed to see the judgements? : YES

2. To be referred to the Reporter or not? : NO

3. Whether Their Lordships wish to see the fair copy of the judgement? : NO

4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder? : NO

5. Whether it is to be circulated to the Civil Judge? : NO

1 Yes
2 to 5 No

PIRAMAL FINANCIAL SERVICES LTD

Versus

RESERVE BANK OF INDIA

Appearance:
MR BHARAT R PANDYA for Petitioner
MR AMAR N BHATT for Respondent No. 1

CORAM : MR.JUSTICE R.K.ABICHANDANI
and
MR.JUSTICE A.R.DAVE

Date of decision: 12/06/2000

ORAL JUDGEMENT

(per R.K. Abichandani, J.)

The appellant-Company challenges the order dated 10th May 2000 made by the learned Company Judge in Company Petition No. 147 of 2000 appointing the Official Liquidator as Provisional Liquidator and issuing an ad-interim injunction restraining the appellant (original respondent), its agents, etc. from encumbering, transferring, alienating and disposing of any of the assets of the appellant company. Notice was issued by the learned Judge on the appellant making it returnable on 18.5.2000.

2. It is stated that after the impugned order was made, the Official Liquidator has started functioning as the Provisional Liquidator.

3. The learned counsel appearing for the appellant submitted that the impugned order made by the learned single Judge contravenes the provisions of the Companies Act, 1956, inasmuch as no such Provisional Liquidator could have been appointed before issuing a notice on the appellant as contemplated by Sec. 450 of the said Act. It is also argued that no special reasons have been recorded by the learned single Judge for dispensing with such notice. The learned counsel pointed out that no Judge's Summons was taken out as required by Rule 11(b) of the Companies (Court) Rules, 1959 (hereinafter referred to as 'the Rules') for appointment of the Provisional Liquidator. It was contended that all applications other than those which were enumerated in Rule 11(a) were required to be made by taking out a Judge's Summons, while in the present case, the order appointing the Provisional Liquidator was made on the main petition itself and, therefore, the impugned order was illegal. It was further argued that the petition for winding up which was required to be in Form No. 45 read with Rule 95 of the said Rules was signed by the advocate for the bank and not by a person authorized to sign such petition, though an affidavit in support of the petition was filed. It was also submitted that the form of the petition for winding up contemplated a prayer for winding up of the company and not any prayer for appointment of a Provisional Liquidator for which a Judge's Summons was required to be taken out under Rule 11(b) of the Rules.

4. Section 450(2) of the Companies Act empowers the court, for special reasons to be recorded in writing, to dispense with the notice, which is required to be given for providing a reasonable opportunity to make a representation before appointing a provisional liquidator. Thus, ordinarily, before a provisional liquidator is appointed, the court is required to give a notice in absence of any special reasons being recorded by the court. This is why it was argued by the learned counsel that since no special reasons were recorded in the impugned order, the appointment of the provisional liquidator was invalid. The copy of the impugned order, which is annexed in this appeal memo, is incomplete so far as paragraph 3 thereof is concerned. From the certified copy of the impugned order which is placed on record by the caveator, we find that it reads as under:

> " In view of the submissions made particularly in paras 19 to 26, I have proceeded to take up the present petition for consideration. It has been stated by the learned advocate for the petitioner that the respondent company has failed and neglected to carry out the orders issued by the Company Law Board and the respondent company has neglected to pay its debts and, therefore, the petitioner was forced to approach this Court."

5. The learned Company Judge, taking note of the averments which were made in paragraphs 19 to 26 of the petition, and after hearing the learned advocate, was satisfied that there were sufficient grounds for appointment of a provisional liquidator, as stated in paragraph 4 of the impugned order. On a close reading of the impugned order, it cannot be said that the learned Company Judge has not recorded reasons for appointing the provisional liquidator without issuing a notice as contemplated under sec. 450(2) of the Companies Act. Reference to the contentions raised in paragraphs 19 to 26 was not an empty formality. If we go to these paragraphs of the winding up petition, which has been filed by the Reserve Bank of India under sec. 45MC of the Reserve Bank of India Act, 1934 (hereinafter referred to as 'the RBI Act'), it transpires that the financial position of the company was very precarious and the scrutiny conducted by the Reserve Bank of India revealed this aspect as mentioned in paragraph 10 of the petition. A notice was issued to the company to show cause as to why the certificate of registration issued to it under sec. 45IA of the RBI Act should not be cancelled. Thereafter, the bank, in exercise of its powers under

sub-sec. (6) of sec. 45IA of the RBI Act, cancelled the certificate of registration issued to the company after considering the reply made by the company and other relevant facts and circumstances of the case as pointed out in paragraph 12 of the petition. The bank directed the company under sec. 45MB (2) of the RBI Act not to sell, transfer, create charge or mortgage or deal in any manner except for repayment of public deposits, with the properties and assets of the company without the written permission of the bank for a period of six months from the date of that order. It is stated in paragraph 13 of the petition that the bank had received a number of complaints from the depositors and unsecured OFDC holders complaining about the non-payment of their dues by the company. Some of the complaints were annexed at Annexure IV to the petition. It is pointed out in paragraph 14 of the petition that the Company Law Board (CLB) had issued certain orders under sec. 45QA of the RBI Act on 11th January 2000 in Company Applications Nos. 2001 to 2004 directing the company to pay its depositors before 31st March 2000 and had directed the Managing Director of the company to file an affidavit of compliance of those directions by 15th April 2000 with the General Manager of the petitioner bank. However, no such affidavit was filed of compliance of the directions of the CLB. It is stated by the bank that it had reliable information that the appellant had not complied with the directions of the CLB to repay the deposits referred to in the order. It is further pointed out by the Reserve Bank of India that the management of the company had undergone frequent changes as mentioned in paragraph 15 of the petition. It is averred that the petitioner-Bank had learned that the ownership of the company had been transferred by its holding company, namely, Electric Control Gear India Ltd., by an agreement dated 7th February 1999 to M/s. Radhey Developers Ltd. for a consideration of Re. 1. The said Radhey Developers Ltd. owed large amount of money to the company which was put in the NPA category. By another agreement dated 7th September 1999, the ownership of the company had been again transferred to M/s. Valour Finstock Pvt. Ltd. for a total consideration of Rs. 10 crores. It is then stated that the erstwhile shareholders of the company, who are named, had filed a complaint on 6th December 1999 before the Superintendent of Police against Valour Finstock Pvt. Ltd. and others alleging that some amounts were due to them towards balance sale consideration under the agreement dated 7th September 1999. It was alleged in the complaint that the functioning of the company was severely hampered and that the recovery of the dues to the company were jeopardized. The Reserve Bank of India

obtained from the office of the Addl. Director General of Police, Economic Offences Cell, Ahmedabad, a copy of the said complaint as mentioned in paragraph 16 of it. Civil Suit No. 1659/99 has been filed by M/s. Electric Control Gear (India) Ltd. in the City Civil Court, Ahmedabad, against the appellant company, Radhey Developers (India) Ltd., Shri Ashish Patel and another for specific performance of the agreement dated 7th February 1999 which is still pending, as stated in paragraph 17 of it. One Unnati Investment Ltd., a creditor of the company, has filed Company Petition No. 296/99 before the High Court for winding up of the company and an order has been issued on 6th December 1999 prohibiting the company and its officers from disposing of its assets. In paragraph 19 of the petition the Reserve Bank of India has stated that it was satisfied that all the conditions mentioned in sec. 45MC for filing a winding up petition were satisfied. It is then stated that the company had received a large number of complaints from the members of the public stating that the company had failed to pay their dues and that the bank was satisfied that it was unable to pay its debts. The Reserve Bank of India, by its order dated 29th December 1999 made under sec. 45IA(6) of the RBI Act, cancelled the certificate of registration of the appellant company and thereupon it became disqualified from carrying on business of a non-banking financial institution and cannot legally accept deposits from the public as stated by the bank in paragraph 21 of the petition. According to the bank, in view of the frequent changes in the management of the company and the various disputes pending between the promoters of the company, as pointed out by it in the earlier part of the petition, the continuance of the company was detrimental to public interest and to the interest of the depositors of the company. In paragraph 25 of the petition it was stated that it is just, equitable, necessary and in the interest of justice that the Official Liquidator or any other fit and proper person be appointed as liquidator of the company and that an injunction be issued prohibiting it and its directors from disposing of their assets. In paragraph 26 of the petition it is stated that for the reasons given in the preceding part of the petition it was proper that a provisional liquidator be appointed.

6. In the prayer clause of the winding up petition the bank had prayed for winding up of the company, appointment of the Official Liquidator as the liquidator of the company for such winding up and appointment of the Official Liquidator as a provisional liquidator of the company to take charge of the company's properties and

assets etc. Ad-interim relief was also sought. The learned single Judge was satisfied that there were sufficient reasons for issuing an order for appointment of a provisional liquidator in view of the submissions made in paragraphs 19 to 26 of the petition which included reference to the averments made in the earlier part of the petition. He took note of the fact that the company had failed and neglected to carry out the orders issued by the Company Law Board and had neglected to pay its debts. The Reserve Bank of India was a responsible body and the averments made in the petition warranted an order of the nature which has been passed by the learned single Judge. The reasons which are reflected in the order by reference to the contents of the petition and the contentions raised on that basis prompted the learned single Judge to issue the order of appointment of a provisional liquidator without issuing a notice under sec. 450(2) of the Companies Act. The learned Judge, by giving reasons and making an order under the said provision, obviously found it fit to dispense with the notice which otherwise was required to be given and in which event there would have been no need to record any special reasons. In our opinion, the learned single Judge has, having regard to the facts and circumstances of the case, rightly exercised his discretionary powers by making an appointment of a provisional liquidator before issuing the notice. The reasons which he has mentioned are writ large in the averments made in the petition by the Reserve Bank of India.

7. The contention that these reasons were not sufficient for appointing a provisional liquidator is wholly misconceived. The averments which are made in the winding up petition, which has been filed under sec. 45MC of the RBI Act, which provision requires the bank to be satisfied about the existence of the grounds mentioned therein, and the facts as regards the dealing by the company, of its assets as also the disputes inter se, warranted appointment of a provisional liquidator in this matter.

8. The contention that the impugned order is bad because it is made on the main petition under sec. 450 of the Companies Act is wholly misconceived. A provisional liquidator can be appointed by the court at any time after the presentation of a winding up petition and before the making of a winding up order and this power is not made dependent on making of a separate application for taking out Judge's Summons. There is no doubt that the procedure prescribed for taking out Judge's Summons is ordinarily required to be followed,

but, including a prayer for appointment of a provisional liquidator in the winding up petition itself made by the bank under sec. 45MC of the RBI Act was sufficient for making an order on the basis of the facts and circumstances which the learned single Judge noticed. In any event, such procedural aspect of taking out a separate Judge's Summons cannot curtail the powers of the court under sec. 450 of the said Act for appointing a provisional liquidator.

9. Even the contention that the petition was signed by the advocate of the bank and not by a bank official will not have the effect of nullifying the order of the learned single Judge. Admittedly, an affidavit in support of the petition has been filed. It is stated by the learned counsel appearing for the caveator that the affidavit below the petition has been duly sworn in by the concerned officer and that the said affidavit below the petition has been signed. This technical aspect can be taken care of by the learned Company Judge before whom the matter is pending.

10. The matter is pending only at a notice stage before the learned Company Judge and only ad-interim relief has been granted. All the contentions which have been raised here could have been raised by the appellant before the learned single Judge and it was not necessary for the appellant to rush to this Court particularly when the notice was made returnable on 18th May 2000. However, the learned counsel for the appellant insisted that the contentions which he is raising should be decided and that is why we have rendered this order.

11. For the reasons given above, the appeal is summarily dismissed. It is made clear that nothing said in this order in connection with the ad-interim relief and appointment of provisional liquidator should be taken to be conclusive by the learned single Judge while deciding the matter on merits in light of the contentions that may be raised by the appellant.

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